REMARKS

No amendment has been made in the present application to place this application condition for allowance. Claims 93-100, newly presented in the instant application remain pending unamended. Claims 93-100 are pending in the present application, which is based upon the subject matter in the originally filed claims (in particular 82-85).

The Examiner contends that the election of the instantly claimed invention was made *without traverse.* This is simply not accurate. Since the very first restriction requirement by the Examiner, Applicants have maintained that any election was made with traversal. Thus, the election of the instant claims 93-100 was also made with traversal, as was stated in the previous response of February 7m 2006. There mere fact that Applicants did not again reiterate the reasons for the traversal in the later filed response as in an earlier response, does not negative (and should not negative) the fact that Applicants elected to prosecute the instant claims with traversal for the reasons which were submitted with those previous response(s).

The Examiner has maintained one rejection of the instant claims. That is based upon the view that the present claims are unpatentable on the grounds of obviousness-type double patenting over claims 1-8 of U.S. patent no. 6,211,249. Applicants respectfully traverse the Examiner's rejection.

As claimed, Applicants polymeric compositions according to the present invention are directed to AB diblock polymeric materials which are end-capped with a group incapable of initiating a ring opening polymerization of a starting lactone and chain-extended with two diisocyanate groups which are linked through a polyoxyalkylene group as claimed. Thus, the present invention is directed to AB di-diblocks as claimed which are chain-extended with a di-diisocyanate chain extender itself linked through a polyoxyalkylene group as claimed.

The compositions according to the present invention are clearly non-obvious over claims 1-8 of the '249 patent inasmuch as the claims of the '249 patent are not directed to di-diblocks which are chain-extended using a two diisocyanate chain extenders linked together through a polyoxyalkylene linker and there is absolutely nothing in the claims which brings to mind the compositions presently claimed which can also be referred to as AB-B-AB type diblock materials. Notwithstanding the fact that the claims of the '249 patent may dominate and read on the claimed embodiments of the present invention, that is not the test of obviousness-type double patenting- the test is whether or not the instant claims are *obvious* based upon a clear and convincing standard over the claimed subject matter of the '249 patent. Clearly, the answer is no. See *In re Kaplan*, 789 F.2d 1574, 229 USPQ 678 (Fed. Cir. 1986) and *Gerber Garment Technology, Inc.* v. *Lectra Systems, Inc.*, 916 F.2d 623, 16 USPQ2d 1436 (Fed. Cir. 1990).

There is absolutely nothing in the claims of the '249 patent which would render the present application obvious inasmuch as the polyoxyalkylene linker presented in the composition claims of the present invention is not disclosed nor even obliquely mentioned or suggested by the claims of the '249 patent. There is simply nothing in the '249 patent claims which suggests or even brings to mind a polyoxyalkylene extended di-diisocyanate chain–extender which is presently claimed.

The compositions claims of the instant application are clearly patentably distinct over the claimed subject matter of the '249 patent, notwithstanding the fact that the claims of the '249 patent may read on and dominate the present invention.

Consequently, it is respectfully submitted that no cogent argument can be made to maintain the Examiner's obviousness-type double patenting rejection and the Examiner's withdrawal of this rejection is respectfully requested.

For the above reasons, Applicants respectfully submit that the instant application is

clearly patentable and such action is respectfully requested.

Applicants have neither cancelled nor added any claims. No fee is due for the presentation of this amendment. A small entity form is on file in the present application.

If the Examiner determines that a fee is due or any overpayment has been made, please charge/credit deposit account 04-0838.

Respectfully submitted,

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Certificate of Mailing

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on June 20, 2006.

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